

REMARKS

Applicants acknowledge receipt of the final office action dated October 25, 2004, in which the Examiner indicated that claims 18, 19, 23, and 24 would be allowable and rejected the balance of the claims pending in the application. In this after-final response, Applicants submit an affidavit and arguments and respectfully request withdrawal of the rejections for the following reasons.

Objections to the Drawings

The Examiner objected to the drawings on the grounds Figure 1 does not illustrate reference numeral 62 and that certain other reference numerals are not shown on Figure 1. A third Proposed Drawing Amendment is submitted herewith, in which the reference numerals in question have been added to Figure 1. The Proposed Drawing Amendment also includes an amendment correcting an error in Figure 5.

Statement regarding the Amendments

Applicants have amended paragraph [0020b] (previously) added by amendment to correct a typographical error.

Applicants have amended the claims, not to provide further distinction over the art, but to remove unnecessary limitations and/or clarify the intended claim scope. Applicants believe the claims as amended are allowable for the reasons set out below and therefore respectfully request entry of the amendments.

Rejection under 35 U.S.C. § 103

In rejecting claims 2, 4, and 14-24 as unpatentable over Stewart et al ('496) in view of Cerutti et al, the Examiner asserts that Stewart discloses a multistory building meeting the limitations of claims 15 and 20 with the exception of using poured-in-place concrete construction techniques. Applicants again respectfully submit that this is in error for the reasons set out below.

First, Applicants submit that Stewart makes no novel teaching with respect to tunnel-forming. Stewart's only reference to tunnel-forming occurs in the third paragraph of his Detailed Description, where he merely states that multi-storey buildings "can" be formed using tunnel-form technology. All of the plan views of Stewart illustrate column and plate construction for the

parking garages, which Stewart is forced to use because he is unaware of and thus unable to take advantage of the concepts of the present invention. This is confirmed in the attached Affidavit of Darcy Garneau, which is attached hereto and discussed in detail below.

Second, even assuming *arguendo* that Stewart does suggest the use of tunnel-form construction for parking garages, Applicants submit that he does not teach or suggest the presently claimed concepts in any way. The Examiner states, on page 3 of the Office Action, that Stewart discloses "...drive aisle openings in the first tunnel walls being wide enough to accommodate a parking space in addition to the drive aisle." Applicants simply do not understand the basis for this statement.

While Applicants agree that Stewart teaches parking spaces 508, 510 and a drive aisle 512, Stewart *does not* teach or suggest *extending the drive aisle opening* in any manner. Put another way, according to Stewart, the drive aisle openings in each wall are the same width and none are wide enough to span a parking space. There is no point in Stewart's garage where a portion of a wall between two parking spaces has been removed such that a car could park "under" (in line with) the tunnel-formed wall. Applicants emphasize that the present claims relate to openings in (through) the walls, and not to the spaces between walls. The creation of an extended opening in selected tunnel-formed walls, combined with the other recited features that make such an opening possible, is at the heart of applicants' claims.

Finally, as set out in the attached Affidavit, nothing in Stewart teaches or suggestion any deviation from the conventional construction of parking decks. Stewart provides for supporting the vertical load of the superstructure *by including a plurality of perimeter columns 46 and a plurality of interior columns 47*. Stewart shows columns in Figures 2-5 and 7-23 and teaches no advances in the state of the art of building construction. Significantly, when Stewart wishes to create a space that is larger than a tunnel width, he supplies the necessary support by using conventional columns. Thus, specifically, Stewart does not teach or suggest a tunnel-based construction in which the tunnels walls are configured such that the space defined by the structure is not limited to a tunnel configuration.

Request for Substantiation

If the Examiner continues to base rejection of the present claims on an assertion that Stewart teaches discloses "...drive aisle openings in the first tunnel walls being wide enough to

accommodate a parking space in addition to the drive aisle,” Applicants respectfully request that the Examiner provide substantiation of this assertion in the form of an annotated Figure (from Stewart) showing where those extended drive aisle openings can be found.

Restatement of the Invention

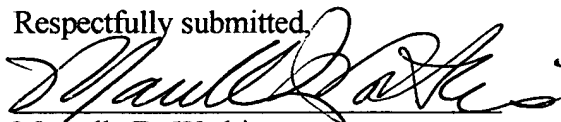
Applicants have invented a method for forming a parking substructure that uses a tunnel-forming technique that does not require supplemental columns and yet allows for a more efficient spacing of automobiles within the parking structure than would be possible using conventional tunnel-building techniques. This is a breakthrough in the state of the art because the standard desired width of tunnels for living quarters is not an efficient width for parking spaces. As described in the original specification, the disparity between the desired wall spacings in the substructure and superstructure formerly could only be overcome by inclusion of an expensive “transfer deck” between the substructure and superstructure. The present invention advances the art, therefore, by making possible a desirable spacing in both the substructure and superstructure without necessitating a transfer deck. Nothing in the art of record teaches or suggests the claimed invention.

Conclusion

Applicants sincerely appreciate the effort the Examiner has invested in the present case.

For all of the reasons set out above, applicants submit that claims 15 and 20, as well as the claims that depend from them, are allowable over the art of record. Applicants therefore request that the Examiner enter the amendments and withdraw the rejections. If the Examiner has any questions or comments, or would like to suggest any further amendments, he is encouraged to telephone the undersigned at (713) 238-8043.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Walter H. Mawby, et al.

Serial No.: 09/902,023

Filed: July 11, 2001

For: Method for Constructing A
Multistory Building

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Group Art Unit: 3634

Examiner: K. Tran

THIRD PROPOSED DRAWING AMENDMENT

Atty Docket: 2051-00101

Date: December 23, 2004

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action dated October 25, 2004, Applicants submit the attached sheet containing proposed amendments to Figures 1 and 5. Specifically, several reference numerals have been added to Figure 1 and a correction has been made to Figure 5.

Applicants respectfully request that this amendment be entered.

Respectfully submitted,

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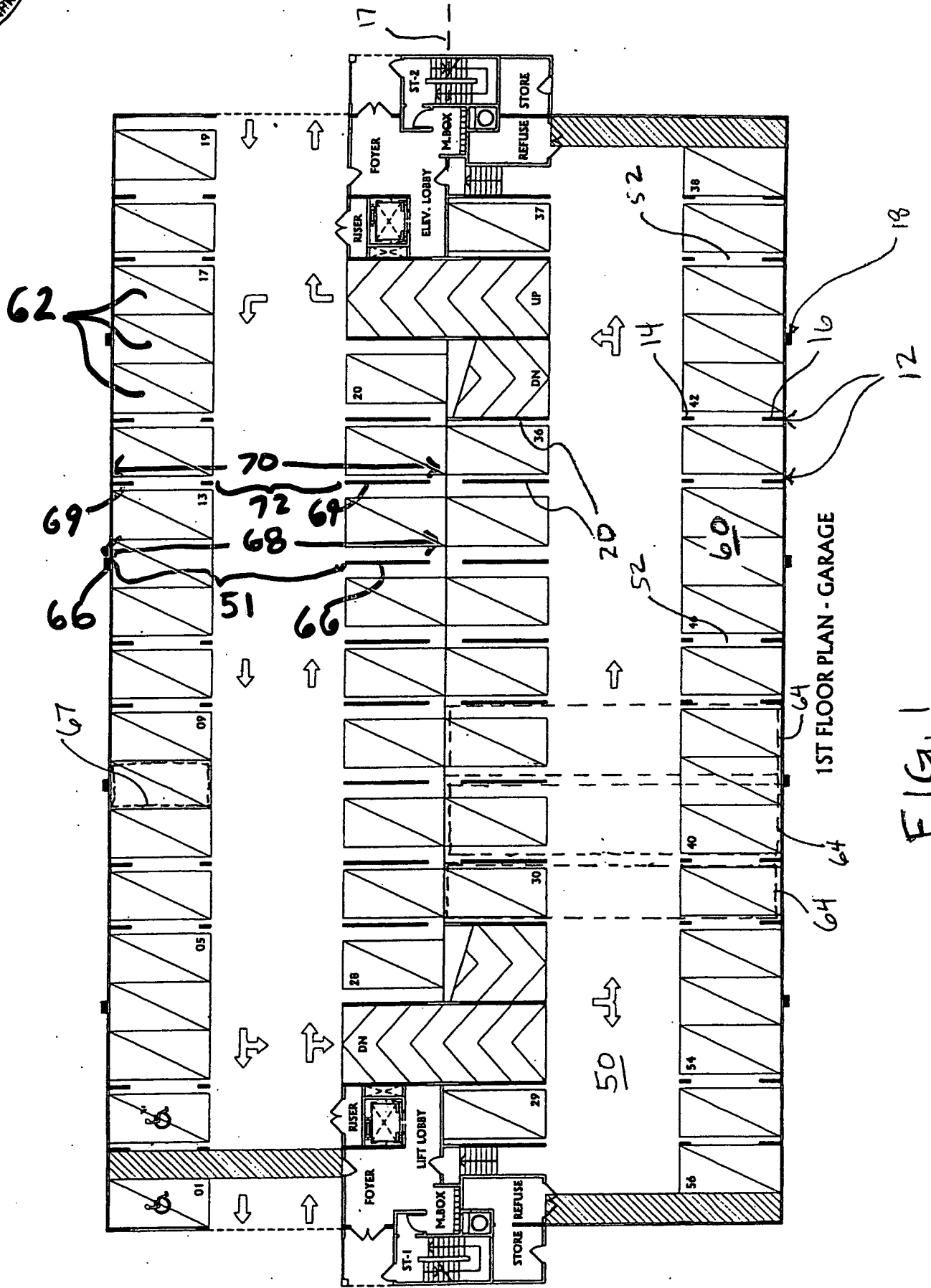


FIG. 1

